IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 32 OF 2005.

1. Ms. Kai-Tech Constructions Pvt. Ltd
   Ground Floor, Kaithra Mansion,
   Behind St. Anne's School,
   Post Fatorda, Agalli,
   Margao, Goa.

2. Mr. Chachappan M.C.,
   (Director)
   Ms. Kai-Tech Constructions Pvt. Ltd
   Ground Floor, Kaithra Mansion,
   Behind St. Anne's School,
   Post Fatorda, Agalli,
   Margao, Goa. ..... Petitioners/
   Accused

V e r s u s

1. M/s Afonso Mining Equipment Company,
   a partnership firm,
   S-19, Regency Plaza,
   Near Popular HighSchool,
   Comba, Margao, Salcete, Goa.
   Represented by its working partner,
   Mr. Oscar Afonso,
   Son of Antonio Afonso,
   resident of House No. 103,
   Nagmoddem, Navelim,
   Salcete, Goa.

2. STATE
   (through Public Prosecutor) ..... Respondents

Shri Shivan Dessai, Advocate for the Petitioners/Accused.

Shri Bras De Sa, Advocate for Respondent no.1.

Shri S. N. Sardessai, P. P. for the State/Respondent no.2.

CORAM : N. A. BRITTO, J.

DATE : 23rd February, 2006.

P.C.

This revision is filed by the accused, who have been convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881, by the learned Chief Judicial Magistrate, Margao. The learned Additional Sessions Judge, vide his Judgment/Order dated 18.10.2005, dismissed the appeal filed by the petitioners/accused herein. The learned Chief Judicial Magistrate had not passed any sentence against the accused but had ordered the accused to pay only compensation of Rs. 2,40,000/-, which was the amount due by the accused to the said Complainant, (respondent no.1, herein). There is no dispute that after the dismissal of the appeal by the learned Additional Sessions Judge, on 18.10.2005, the amount of compensation of Rs.2,40,000/- was paid by the accused.

2. The complaint filed by the Complainant was in respect of a

cheque of Rs.2,00,000/-, issued by the accused to the Complainant as part payment of his liability. There is no dispute that in terms of a sub-contract, the Complainant was required to carry out certain works in terms of the Work Order dated 23.03.2001 and, as on 14.09.2001, the Complainant had raised a bill to be paid by the accused in the sum of Rs.10,38,191.80 and the accused in part payment of the said liability, had issued to the Complainant, a cheque in the sum of Rs.2,00,000/- on or about 15.10.2001, which the Complainant deposited on the last date namely 15.04.2002 but was dishonoured with the remark '*Exceeds Arrangement*'. The Complainant sent a legal notice to the accused on or about 22.04.2002. In the said notice, the Complainant referred to the works done by him in the sum of Rs.10,38,191.80 and demanded the payment of the amount due on the said cheque dated 15.10.2001, in the sum of Rs.2,00,000/-. The accused replied to the said notice on or about 24.04.2002, a copy of which was produced by the Complainant, at exhibit C.w.1/F. In the said notice, the accused did not dispute either the bill of Rs.10,38,191.80 raised by the Complainant to be paid by the accused nor the liability to pay the said cheque amount of Rs.2,00,000/-. All that the accused did, was to ask to provide the measurement sheet and the date-wise payment received by the Complainant. When the Complainant was cross examined in the course of

the cross examination, the Complainant had admitted that on or about 29.10.2001, 08.12.2001 and 28.02.2002, the Complainant had received a sum of Rs.1,00,000/-, Rs.50,000/- and Rs.1,40,000/- respectively and in all, Rs.2,90,000/- but, when the Complainant was re-examined, the Complainant has stated that even after the cheque was issued to him, the complainant was still doing the work for the accused and that the payments received by him were not pertaining to the cheque and they were pertaining to the other work done by him for the accused. The Complainant had stated that the said amount of Rs.2,90,000/- received by him on three different dates, was received by him in cheques.

3. The learned Additional Sessions Judge, in his Judgment, observed that that the accused had received legal notice on 23.04.2002 and that there was no evidence that the accused had made any payments after 23.04.2002 and the above payments of Rs.2,90,000/- were made before 23.04.2002 and, as such, could not be considered to have been payments made for satisfaction of the said cheque of Rs.2,00,000/-, dated 15.10.2001 and that the evidence brought out by the Complainant showed that the accused had failed to make the payments of cheque amount of Rs.2,00,000/- of the cheque dated 15.10.2001, within 15 days of the receipt

of notice on 23.04.2002. Shri Dessai, the learned Counsel on behalf of the petitioner/accused has submitted that the entire liability of the accused was towards the said bill raised by the Complainant against the accused in the sum of Rs.10,38,191.80 and once the payments were made by the three cheques, the same ought to have been adjusted by the Complainant towards the liability of the first cheque dated 15.10.2001. According to learned Advocate Shri Desai, there was only one transaction between the parties namely the one arising out of the Work Order dated 23.03.2001 and, therefore, the subsequent payments ought to have been adjusted by the Complainant towards the liability due by virtue of the first cheque.

4. Admittedly, till date, the entire liability towards the bill of Rs.10,38,191.80, has not been discharged by the accused. As stated by the Complainant, the subsequent three payments of Rs.1,00,000/-, Rs.50,000/- and Rs.1,40,000/-, were all made by cheques and the same were towards the liability of the said bill of Rs.10,38,191.80. It is not the case of the accused that even till date, the accused has paid to the Complainant the said amount of Rs.2,00,000/- due on the said cheque dated 15.10.2001. In the circumstances, the contention that the Complainant ought to have adjusted the payments made subsequently by the said three cheques,

towards the amount due on the first cheque, appears to be totally misplaced.

5. Moreover, on behalf of the Complainant, it has been pointed out that after the Judgment of the Additional Sessions Judge, the accused paid the compensation ordered to be paid in the sum of Rs.2,40,000/- and, therefore, nothing survives in this revision petition. If that is so, it would be additional ground not to entertain this revision, considering that revision is not a matter of right.

6. For reasons stated herein above, the revision filed by the petitioner deserves and is hereby dismissed.

Order accordingly.

N. A. BRITTO, J.

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